



**Michael P. Goggin**  
Assistant Vice President –  
Senior Legal Counsel

AT&T Services, Inc.  
1120 20<sup>th</sup> St NW, Suite 1000  
Washington, DC 20036

+1.202.457.2055  
[michael.p.goggin@att.com](mailto:michael.p.goggin@att.com)

## NOTICE OF EX PARTE

February 28, 2022

**By ECFS**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, D.C., 20554

Re: *Auction of Flexible-Use Service Licenses in the 2.5 GHz Band for Next-Generation Wireless Services*, AU Docket No. 20-429

Dear Ms. Dortch:

On February 24, 2022, Michael Goggin, Alex Starr, and Raquel Noriega of AT&T Services Inc. (“AT&T”) and James Young of Sidley Austin LLP on behalf of AT&T, spoke by telephone with Jonathan Campbell, Gary Michaels, Martha Stancill, Lyndsey Grunewald, and Scott Mackoul of the Office of Economics and Analytics of the Federal Communications Commission (“Commission” or “FCC”), as well as Susan Mort, Blaise Scinto, John Schauble, Madelaine Maior, Nadja Sodos-Wallace, and Melvin Del Rosario of the Commission’s Wireless Telecommunications Bureau. The discussion was consistent with the points made in AT&T’s prior filings in this docket.

During the meeting, we discussed, consistent with AT&T’s further comments filed February 23, 2022, that the Commission should not adopt the clock-1 auction format proposed in the Commission’s most recent Public Notice.<sup>1</sup> AT&T reiterated that a clock auction, like *any* multiple-round auction, would give T-Mobile overwhelming advantages that would deter participation by other bidders and would allow T-Mobile to win all of the available spectrum. Although AT&T agrees that a multiple-round auction, such as a clock auction, would be superior to a single-round auction in the vast majority of cases, the extremely unusual circumstances here counsel in favor of either the Commission’s original proposal of a single-round, sealed-bid auction or an incentive auction.

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<sup>1</sup> Public Notice, “Further Comment Sought on Competitive Bidding Procedures for Auction 108,” DA 22-120, AU Docket No. 20-429, released February 9, 2022 (“*Notice*”).

AT&T also discussed that the Commission should address key information asymmetries between T-Mobile and all other bidders. As of 2019, there were 2,193 EBS licenses, and 2,046 of them were subject to long-term de facto control leases, the majority of which were with Sprint – now T-Mobile.<sup>2</sup> As a result, for most potential bidders, the value of these overlay licenses depends heavily on whether and when a winning bidder could obtain rights to the underlying incumbent licenses within the overlay area. In many cases, whether and when the winner could obtain rights to incumbent licenses will depend on lease terms such as the duration of the leases, whether there are rights of first refusal to renew the lease or purchase the incumbent’s licenses, and lease termination provisions.

At this time, T-Mobile is the *only* likely bidder with information about the nature and extent of such lease provisions. In other words, only T-Mobile knows whether and when rights to the incumbent licenses within the overlay areas and broader regions will be available. Thus, many commenters agree that T-Mobile has a crucial information advantage in the auction.<sup>3</sup> The Commission should level the playing field by obtaining and disclosing to bidders the relevant terms of those leases. All prospective bidders should have equal access to information on lease terms for spectrum held by the underlying licensees that may become available on the secondary market. Such information would allow bidders to make a more accurate assessment of their own valuation of the overlay license, which in turn should make the auction more competitive and more likely to direct the spectrum to its highest valued uses.

Even T-Mobile effectively concedes that information regarding key lease terms would be important to potential auction participants. Although T-Mobile tries to argue that proponents of disclosure are “wrong when they argue that a licensee’s contractual rights are ‘relevant to any prospective bidders’ valuation of nearby spectrum at auction,” T-Mobile ultimately admits that “[d]isclosure of leasing information could influence bidding strategies....”<sup>4</sup> Indeed, it would influence those strategies in a *pro-competitive* way, by giving bidders relevant information and a more accurate sense of when and how they might gain access to the underlying license rights within the overlay area. This is not an idle concern: the educational institutions that hold the underlying licenses still have an opportunity to capture some of the enhanced value of their

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<sup>2</sup> See, e.g., Report and Order, *Transforming the 2.5 GHz Band*, 34 FCC Rcd 5446, ¶ 79 (2019).

<sup>3</sup> See, e.g., AT&T Comments at 8-10; AT&T Reply Comments at 5-6; North American Catholic Educational Programming Foundation (“NACEPF”) and Mobile Beacon Reply Comments at 8-9; United States Cellular Corporation Comments at 15-16; Verizon Comments at 3-4; Verizon Reply Comments at 3; Voqal Reply Comments at 4-5; The Wireless Internet Service Providers Association (“WISPA”) Comments at 14; Letter from Allison Minea, Vice President and Associate General Counsel, Regulatory Affairs, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120 and AU Docket No. 20-429 (filed Oct. 20, 2021).

<sup>4</sup> Letter from Steve B. Sharkey, Vice President, Government Affairs Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120 and AU Docket No. 20-429 (filed Jan. 19, 2022).

licenses due to the switch to flexible use, and at least one educational institution already seems highly motivated to pursue this approach.<sup>5</sup>

The Commission has ample authority to require such disclosures.<sup>6</sup> T-Mobile's arguments on this point have been non-responsive.<sup>7</sup> For example, T-Mobile acknowledges that the Commission's leasing rules already require parties to spectrum leases to "retain a copy of the lease agreement and to make it available upon request by the Commission."<sup>8</sup> T-Mobile claims that this rule does not *require* the submission or disclosure of leases contemplated here,<sup>9</sup> but this misses the point. The Commission clearly has the statutory authority to adopt a rule here requiring submission and disclosure of limited lease terms in this auction; otherwise it would not have had the authority to adopt the existing rule requiring parties to submit such leases to the Commission upon request.

Moreover, as T-Mobile acknowledges, the information can be provided under a protective order, as the Commission has done before, to the extent there are concerns about competitively sensitive information.<sup>10</sup> The Commission routinely collects information that is arguably far more sensitive than these lease agreements and makes that information available to interested parties, often pursuant to appropriate protective orders. As just one example, in the Business Data Services proceedings, the Commission collected, and made available to parties (subject to protective orders), highly competitively sensitive data from the industry, which showed the specific routes, capacities, and service locations of each carrier's networks.<sup>11</sup>

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<sup>5</sup> See Petition for Declaratory Ruling of Christian College of Georgia, Inc., Call Sign WND620, Lease No. L000005369 (filed Nov. 3, 2021).

<sup>6</sup> See, e.g., 47 U.S.C. §§ 303(r), 309(j), and 316.

<sup>7</sup> See Letter from Steve B. Sharkey, Vice President, Government Affairs Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120 and AU Docket No. 20-429, at 2-5 (filed Nov. 17, 2021) ("T-Mobile 11/17/21 *Ex Parte*"),

<sup>8</sup> Report and Order and Further Notice of Proposed Rulemaking, *Promoting Efficient Use of Spectrum*, 18 FCC Rcd 20604, ¶¶ 105 & 153 (2003); see also, e.g., 47 C.F.R. § 1.9020(b)(3) (same); see T-Mobile 11/17/21 *Ex Parte* at 3.

<sup>9</sup> T-Mobile 11/17/21 *Ex Parte* at 3.

<sup>10</sup> *Id.* at 4. T-Mobile's claim that the lease information is competitively sensitive is exaggerated. See *id.* at 2-3. The parties are not even asking for most of the types of information that T-Mobile mentions, such as the "fees" T-Mobile pays or "restrictions on the use" of the spectrum. *Id.* at 2. The parties are merely asking for disclosure of a limited subset of leasing terms (such as lease duration, rights of first refusal, and termination) that would be relevant to a bidder's valuation of the *overlay* licenses.

<sup>11</sup> See Order and Data Collection Protective Order, *Special Access for Price Cap Local Exchange Carriers*, DA 14-1424, WC Docket No. 05-25, RM-10592 (Oct. 1, 2014).

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Should any questions arise concerning this ex parte, please do not hesitate to contact me at (202) 457-2055.

Sincerely,

/s/ Michael P. Goggin  
Michael P. Goggin